

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

THURSDAY, THE 1ST MARCH 2007 / 10TH PHALGUNA 1928

OP.No. 14040 of 1999(U)

PETITIONER:

- * (T.A.SOORYACHANDRAN,
DISTRICT LABOUR OFFICER (SPL)
LOWER PERIYAR HYDROELECTRIC PROJECTS,
PAMPLA, THATTEKKANNI P.O., IDUKKI DISTRICT.**
- * P.A.SOORYACHANDRAN AS PER ORDER DT.8.9.99 IN CMP. 37667/99.**

**BY ADV. SRI.P.SANKARANKUTTY NAIR
SRI.T.V.AJAYAKUMAR
SRI.K.SANDESH RAJA**

RESPONDENTS:

- 1. STATE OF KERALA, REP.BY THE
CHIEF SECRETARY, SECRETARIAT,
THIRUVANANTHAPURAM.**
- 2. SECRETARY TO THE GOVERNMENT,
LABOUR AND REHABILITATION,
© DEPARTMENT, THIRUVANANTHAPURAM.**

BY GOVERNMENT PLEADER SRI.P.K.RAVIKRISHNAN

**THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 01/03/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

ORDER ON CMP. NO.22640//1999 IN OP. 14040/99

DISMISSED

1.3.2007

SD/- S.SIRI JAGAN, JUDGE

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE ORDER NO.G.O.(MS) NO.007/91/LBR.REH. DT.11.2.91.

EXT.P2:- COPY OF THE ORDER NO.G.O.(MS) 37/96/LBR DT.15.3.96.

EXT.P3:- COPY OF THE COUNTER AFFIDAVIT DT.

EXT.P4:- COPY OF THE ORDER NO.G.O.() NO.1845/96/LBR DT.2.7.96.

EXT.P5:- COPY OF THE JUDGMENT DT.27.5.98 OF THIS HON'BLE COURT IN OP.4097/91.

EXT.P6:- COPY OF THE REPRESENTATION DT.12.8.98 BY THE PETITIONER.

EXT.P7:- COPY OF THE NOTICE DT.2.9.98 SENT BY THE 2ND RESPONDENT TO THE PETITIONER.

EXT.P8:- COPY OF THE GOVERNMENT LETTER NO.22160./C2/98/LBR DT.15.5.99.

EXT.P9:- COPY OF THE OBJECTION FILED BY THE PETITIONER DT.31.5.99.

/TRUE COPY/

tss

S. SIRI JAGAN, J.

O.P.NO. 14040 OF 1999

DATED THIS THE 1st DAY OF MARCH, 2007

JUDGMENT

The petitioner originally entered service of the Government of Kerala as a Child Development Project Officer in the department of Social Welfare in 1983. While working so, he was selected and appointed as Labour Officer in the department of Labour, by special recruitment applicable to the members of Scheduled Castes and Scheduled Tribes. Petitioner joined that post on 9.1.1984. During such service he was charge sheeted by the criminal Court under Section 5(1)(c) read with Section 5(2) of the prevention of Corruption Act and Section 408 of Indian Penal Code.

2. He was convicted for the offences by the Court of the Enquiry Commissioner and Special Judge, Thrissur and sentenced to undergo a simple imprisonment for one year and to pay a fine of Rs.500/- in C.C.No.10/1988. Against this judgment, his appeal before this Court was dismissed. In S.L.P.No.954 of 1991 filed before the Hon'ble Supreme Court of India, the Hon'ble Supreme Court while affirming the conviction, reduced the sentence to four months simple imprisonment. The petitioner suffered the imprisonment in terms of

the said judgment.

3. In view of the conviction in the criminal case, by Ext.P1 order the petitioner was removed from service. Challenging Ext.P1 order, the petitioner filed O.P.No.4097/1991. While that original petition was pending, the petitioner's mother filed a review petition before the Government in which the Government passed Ext.P2 order by which the punishment of removal from service was modified and on considerations of sympathy he was directed to be appointed as fresh recruit. Accordingly, the petitioner was appointed as a fresh recruit and he was continuing in service. While so, O.P.No.4097/91 came up for hearing before this Court and by Ext.P5 judgment dated, 27.5.98, this Court held that Ext.P1 order was passed in violation of the principles of natural justice and therefore Ext.P1 order was set aside and the Government was directed to pass appropriate orders under Rule 18 of the Kerala Civil Service (Classification Control and Appeal) Rules 1960, after an opportunity of being heard to the petitioner and in consultation with the Kerala Public Service Commission. It appears that while in the course of hearing of the original petition, the fact that the Government had earlier passed Ext.P2 order pursuant to which the petitioner was appointed as a fresh recruit was nor brought to the attention of this Court. Since this Court had directed the Government to pass fresh orders after quashing Ext.P1, pursuant

to Ext.P5 judgment, the petitioner was given a notice of hearing and pursuant to the same, the second respondent tentatively decided to remove the petitioner from service with effect from 11.1.88. Accordingly, Ext.P8 notice dated, 15.5.99 was issued to him directing him to show cause why the tentative decision to remove him from service should not be confirmed. The petitioner filed Ext.P9 objections to the same. But he filed this original petition challenging Ext.P8 notice and obtained stay of further proceedings pursuant to Ext.P8. In view of the stay order passed by this Court, he has been continuing in service and he is due to retire shortly.

4. It is also submitted that in the meanwhile the petitioner was also promoted as Joint Development Commissioner on 6.7.06 and now he is working as Junior Inspector of Plantations with effect from 30.1.07.

5. The contention of the petitioner is that in view of Ext.P2 decision of the Government to give him re-appointment, the very same Government cannot now take further proceedings to remove him from service.

6. On the other hand, the learned Government Pleader would submit that the whole thing happened only because of the petitioner's own act in simultaneously prosecuting a review petition before the Government and the original petition before this Court. Although the Government had passed Ext.P2 order directing his

fresh appointment in view of Ext.P5 judgment of this Court, the Government had no option but to comply with the judgment by taking further proceedings as directed in Ext.P5 judgment, notwithstanding Ext.P2 order passed by the Government in the review petition filed by the mother of the petitioner. According to him once Ext.P1 order itself has been set aside by this Court by Ext.P5 judgment. Ext.P2 order passed in review of Ext.P1 order itself has become non-est in law. Therefore the petitioner has to go through the process of fresh proceedings in accordance with the directions in Ext.P5 judgment, is the submission of the learned Government Pleader.

7. After hearing both sides, I am satisfied that this is a case where this Court has to take a lenient view in the matter, although technically what the Government has done may be correct going by Ext.P5 judgment. Even if Ext.P8 is taken to its logical conclusion since the Government had earlier taken a decision by Ext.P2 to give him a fresh appointment, it would be totally unjust now to turn around and take a fresh decision to remove him from service. Since the Government had already shown some sympathy to the petitioner, it would not be in the fitness of things to take away the benefits of such sympathy shown to the petitioner only because of the peculiar circumstances caused by prosecuting two remedies simultaneously. Now that the petitioner had continued in

service for so many years and he is on the verge of retirement and since the Government has also found him fit for further promotion, I feel that the matter should be given quietus at this stage. Accordingly, I quash Ext.P8 notice and direct the respondents to allow the petitioner to continue in service as per Ext.P2 order till his retirement without reference to any further proceedings in accordance with Ex.P5.

Original petition is disposed of as above.

S. SIRI JAGAN, JUDGE

Acd

